



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70761
4 June 2013

Mr. Michael Morisy
MuckRock News
DEPT MR5714
PO Box 5819
Boston, MA 02205-5819

Dear Mr. Morisy:

This is an initial response to your Freedom of Information Act (FOIA) request dated 24 May 2013, which was received by this office on 24 May 2013. We have interpreted and numbered your request as listed below for ease-of-reference:

1. Any written or electronic communication material created in preparation for the public opening and announcement of NSA's Utah Data Center (UDC). A ribbon cutting was planned to take place on May 30
2. Any written or electronic communication material created in preparation for any other public events and announcements similar to the ribbon cutting.
3. Print and electronic invitations for each public/press event related to the UDC
4. List of invited participants for each public/press event related to the UDC
5. List of attendees for each public/press event related to the UDC
6. Any PowerPoint or other presentations for each public/press event related to the UDC
7. Menu for any press, VIP, and ribbon cutting events for each public/press event related to the UDC
8. Speeches and talking points for delivery for each public/press event related to the UDC
9. Video or audio presentations given for each public/press event related to the UDC
10. Post-Mortem and Lessons-learned reports generated after an event for each public/press event related to the UDC

This letter acknowledges that we have received your request and provides some administrative information. Your request has been assigned Case Number 70761. We have begun to process your request and will provide a more substantive response to you shortly. Your request for, and search and review of, information

concerning the above-noted public event(s) is expected to be extensive and will require an elaborate search. The complexity of the search constitutes an exceptional circumstance and precludes our responding to you within 20 working days of our receipt of your request.

I have considered your request to be classified as “a representative of the news media” and determined that it should be denied. The FOIA, at 5 U.S.C. 552 (a)(4)(A)(ii), sets three standards that must be met for a requester to qualify as a representative of the news media:

1. Requester must be a person or entity that gathers information of potential interest (news) to a segment of the public. The FOIA defines ‘news’ as information that is about current events or that would be of current interest to the public.
2. Requester must use its editorial skills to turn the raw materials into a distinct work.
3. Requester must distribute that work to an audience.

I have determined that you do not meet standards 1 and 2, as listed above. The first criterion that must be met to be considered a representative of the news media is that the requester gathers the information in the public interest. Representatives of the news media normally are organized to seek out and gather information generated by public interest, not information generated by internal interests the individuals or organizations may have. This is what qualifies these individuals or organizations to be considered as members of the news media. To meet the second criterion, a requester must use its editorial skills to turn raw material into a distinct work. You have offered no information with regard to your intended use of any materials that might be released as a result of this FOIA request.

With regard to your request for a fee waiver, there is a two-pronged test a requester must satisfy to qualify for a fee waiver. First, the requested information must be in the public interest. Second, the request must not be primarily in the requester’s commercial interest. The following six factors further define the two-pronged waiver test, and a requester must meet the first four factors to qualify under the public interest prong:

1. The subject of the request must concern the “operations and activities of the government.”
2. The disclosure of information is “likely to contribute to an understanding of government operations and activities.”
3. The disclosure of the requested information will “contribute to public understanding.”
4. The disclosure is likely to contribute “significantly” to public understanding of government operations and activities.

5. The requester has a commercial interest that would be furthered by the requested disclosure.
6. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, thereby rendering the disclosure “primarily in the commercial interest of the requester.”

In analyzing these criteria, I have determined that you do not meet two of these factors. You have not provided evidence to sufficiently meet factor 3 regarding how the information will “contribute to public understanding.” This factor generally means that the requester can disseminate the information to the general public. In your request, you state that the data collected will be posted to MuckRock.com. You do not demonstrate with particularity that the information will be communicated to the public. You do not describe specifically your qualifications, the nature of your research, and the purpose for which you intend to use the requested information. Specialized knowledge may be required to extract, synthesize, and effectively convey the information to the public. You do not provide evidence of past analysis on this subject matter nor any evidence of past use of materials gained through FOIA requests. Furthermore, you do not provide an indication of your ability to understand and process the information such that the public will be able to interpret your analysis of the records.

Therefore, for the reasons described above, you also do not meet factor 4. You have not shown how this information will “significantly” contribute to public understanding of government operations or activities. To warrant a waiver, the public’s understanding of the information, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Moreover, without demonstration of an expertise in the subject area, an ability to disseminate the information, and an ability to increase the public’s understanding in a meaningful way, a “significant” contribution to public understanding is not likely.

After reviewing your request, I have determined that you do not meet the standards of factors 3 and 4 of the public interest prong. You do not qualify for a fee waiver because you have not satisfied the public interest requirement of the FOIA.

The Initial Denial Authority for NSA is the Associate Director for Policy and Records, David J. Sherman. If you disagree with the decision regarding your fee category or the fee waiver, you may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days after the date of the adverse determination. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference your fee category or the fee waiver and shall contain, in sufficient detail and particularity, the grounds upon which you believe the adverse determinations are unwarranted. The NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Since you do not qualify for media status, you have been placed in the "all other" fee category. As such, you are allowed 2 hours of search and the duplication of 100 pages at no cost. Duplication fees are computed in accordance with DoD Regulation 5400.7-R and are assessed at \$.15 per page. Search fees are calculated at \$44.00 per hour. Until the processing of your requests is complete, we are unable to determine the number of releasable pages. Should we determine that search fees are assessable beyond your 2 free hours, you will be notified with an estimate of the cost. All assessable fees accumulated will be due when the processing of your request has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (DJ4), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pamela N. Phillips", written in a cursive style.

PAMELA N. PHILLIPS
Chief
FOIA/PA Office